

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON TAXATION**

**Call to Order:** By **VICE CHAIRMAN BOB DEPRATU**, on March 8, 1999 at 9:00 A.M., in Room 413/415 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Gerry Devlin, Chairman (R)  
Sen. Bob DePratu, Vice Chairman (R)  
Sen. John C. Bohlinger (R)  
Sen. Dorothy Eck (D)  
Sen. E. P. "Pete" Ekegren (R)  
Sen. Jon Ellingson (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Bill Glaser (R)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Sandy Barnes, Committee Secretary  
Lee Heiman, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 514, 3/1/1999; SB 515,  
3/1/1999  
Executive Action: HB 168, SB 244, SB 375, SB 175

**HEARING ON SB 514**

**Sponsor:** SENATOR BOB KEENAN, SD 38, BIGFORK

**Proponents:** Steve Thompson, Whitefish  
Clif Youmans, Montana Chapter of the Wildlife  
Society  
Bob Love, Columbia Falls

Malcolm Thompson, Columbia Falls  
Janet Ellis, Montana Audubon  
Van Jamison, Montana Wildlife Federation  
Anne Hedges, Montana Environmental Information  
Center  
Denise Roth Barber, Montana Sierra Club

Opponents: Cary Hegreberg, Wood Products Association  
Jerry Sorensen, Plum Creek Timber  
Steve Snezek, Montana Association of Realtors  
Dennis Burr, Montana Taxpayers Association  
Don Allen, Western Environmental Trade Association

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, said that SB 515 has gone by the wayside, so he will only be speaking on SB 514. He said that SB 514 is a forest land conversion tax bill that has been in the works for two-and-a-half years. He said it relates to the conversion of forest land for real estate development. There are similar laws on the books in Washington and Oregon. He provided the committee with amendments, EXHIBIT(tas52a01).

Proponents' Testimony:

Steve Thompson, Whitefish, said that he has been working with SEN. KEENAN for over two years on this issue, which has become a significant concern in western Montana, the whole issue of forest land conversion for real estate development. He provided the committee a copy of a letter from himself, EXHIBIT(tas52a02), with a copy of a letter from Gary Sloan of Whitefish on the back; a letter from Dale Becker, President of the Montana Chapter of the Wildlife Society, EXHIBIT(tas52a03); a Daily Inter Lake article entitled "Bill would tax timberland development," by Jim Mann, dated February 10, 1999, EXHIBIT(tas52a04); a letter from Stephen W. Barrett, Kalispell, EXHIBIT(tas52a05); a letter of Tom Houlick, Libby, EXHIBIT(tas52a06); a letter from Bill Dakin, Columbia Falls Realty, EXHIBIT(tas52a07); a memo from Bill Leonard, Whitefish County Water and Sewer District, EXHIBIT(tas52a08); and a Missoula Independent article entitled "Arrested Development," EXHIBIT(tas52a09).

Mr. Thompson said that this issue is of concern to loggers and people in the timber industry who want to maintain Montana's timber base, as well as wildlife advocates and sportsmen's groups. He said there are some fiscal concerns in connection to providing community services to these outlying rural residences,

concerns regarding the conflicts between wildlife and humans, and concerns about fire management.

**Mr. Thompson** said there had been some concerns raised in the Fiscal Note about the workability of this tax. He said the drafter basically used the existing law that has been in place in Washington since 1993, which has been very noncontroversial. He said forest lands are taxed at a very low rate, a little more than \$1 per acre, as an incentive to keep those lands in forest management. They are not being taxed at their fair market value. However, he said, if those lands are converted for real estate development, then they should be taxed at their fair market value.

**Mr. Thompson** explained that this bill will be phased in over the next seven years through a look-back assessment. The income will go to the counties to help cover the costs of providing services to those new rural residences. He urged support of **SB 514**.

**Clif Youmans, Montana Chapter of the Wildlife Society**, presented a letter from the President of the Montana Chapter of the Wildlife Society in support of **SB 514**, **EXHIBIT(tas52a10)**, which he read as his testimony.

**Bob Love, Columbia Falls**, said he is a logger and forestry consultant, and a hunter and conservationist, which means that his livelihood and lifestyle are entwined with the forests around him. He said that subdivision of forests should be discouraged and forest preservation should be encouraged. He urged support for **SB 514**.

**Malcolm Thompson, Columbia Falls**, said that private owners of large timber have been favored in Montana's taxation process, and it only seems fair that they pay their share of development when it takes place. He sees this bill as a fair catchup for development.

**Janet Ellis, Montana Audubon**, said that land speculation in Montana is big business, and **SB 514** only applies to large forest owners with greater than 2,500 acres in a county which is being converted for subdivision purposes. As Montana continues to grow, it is good public policy to require developments to pay their way with a fair tax incentive. She said Montana Audubon supports the amendments provided by the sponsor.

**Van Jamison, Montana Wildlife Federation**, said that his organization feels that **SB 514** creates a very innovative system whereby a landowner has an opportunity to choose to apply to the state for treatment as forested land, and in essence creates what

amounts to a contractual arrangement with the state. In this arrangement, the landowner chooses, by virtue of making the application, to give up some of the flexibility they might otherwise have with regard to development in exchange for being taxed at a lower rate for a term of 10 years, at which time the landowner has the opportunity to make that choice again. In exchange, the state gets habitat and better development. He urged support of **SB 514**.

**Anne Hedges, Montana Environmental Information Center**, said that Ravalli County grew 38% between 1990 and 1997; Gallatin County grew 21%; Flathead County grew 21%; Lake County grew 20%. She said those are large increases in the population, and we can anticipate that that type of growth will continue. However, Montana does not have mechanisms in place to deal with that type of growth. This bill is a clever mechanism that can benefit the small loggers, and it also benefits communities who don't have any means to pay for the type of growth that they are experiencing.

**Denise Roth Barber, Montana Sierra Club**, said that for the reasons stated already, the Sierra Club supports the bill and the amendments.

#### Opponents' Testimony:

**Cary Hegreberg, Montana Wood Products Association**, said his organization represents companies that manufacture renewable timber resources into building materials and paper products. He said many of the companies that they represent also manage timber lands under sustained yield principles.

**Mr. Hegreberg** addressed several concerns he had with **SB 514**. He said in 1973 the legislature passed a rollback tax on agricultural land. It was very controversial and resulted in litigation. It was finally declared unconstitutional in 1978 and was repealed by the 1991 Legislature. The Fiscal Note on **SB 514** reveals the primary problems with the bill. It says that assessing a rollback tax on a seller is unworkable. It becomes a liability to the buyer, not to the seller.

Also alarming, **Mr. Hegreberg** said, is the Department's stated intent under the bill to unilaterally eliminate forest land tax classifications regardless of acreage size in cases where owners have stated they do not intend to harvest timber. He said the technical notes also point out that the previous owners would be subject to the actions of the new owners. **SB 514** wields penalties and creates conflict and confusion. He urged tabling of this bill.

**Jerry Sorensen, Manager of Land Use for Plum Creek Timber,** provided the committee with copies of his testimony, **EXHIBIT (tas52a11)**. He said that Plum Creek Timber is the largest landowner in Montana. They employ 1300 people, with a payroll of over \$60 million, and they pay several million dollars in property taxes on their mills and timberlands.

**Mr. Sorensen** said that Plum Creek Timber does not believe that forest land is being converted to other uses at a significant rate. He said that if the legislature wants to keep forest land in production, incentives for timberland owners and the forest products industry would be more appropriate than the threat of punitive taxation. He said this bill is poor public policy for reasonable economic development and will have negative consequences for timberland owners in Montana. He urged opposition to **SB 514**.

**Steve Snezek, Montana Association of Realtors,** said that **SB 514** goes after a small handful of private owners of private land. However, with just a couple of changes, this bill could apply to all forest landowners, and with a couple other changes, this bill could apply to timber and ag land at any acreage requirement. He said if the legislature feels this strongly about public control over private land, it should be planned and zoned accordingly at the local level. He urged opposition to **SB 514**.

**Dennis Burr, Montana Taxpayers Association,** said that this bill will not keep people from moving into the woods, and it is not going to stop growth in Montana. He said it appears that the type of development that is trying to be controlled here is probably generally small parcels of land. He reminded the committee of what happened with the rollback tax on agricultural land, which did not work. He said this bill encourages forest management plans to be abandoned and reverting small tracts of these lands to agricultural classifications prior to January of 2000, the effective date of this act. He said there are probably some good goals in this legislation, but he didn't think that it does anything to advance those goals, and he urged opposition to **SB 514**.

**Don Allen, Western Environmental Trade Association,** said this is bad public policy because it takes a punitive approach. He said many of the problems listed by **Mr. Thompson** will not be solved by this legislation, and many of those are being addressed in other ways. He urged tabling of this bill.

**Questions from Committee Members and Responses:**

**SEN. ELLINGSON** said that if we give a tax incentive to the forest products industry and then the owner of the forest changes the use of that forest products land from forestry to something else, whether there is anything wrong with going back and collecting the tax that would have been assessed against that property had it been classified for the use that the owner now intends to put it, and **Mr. Sorensen** said that it is his feeling that Montana does not give a tax break to the forest land owner. He said that we have a tax system that is set up for productivity of forest land similar to agriculture because there is a lot of investment that goes into forest land ownership. If land, when it is sold, changes use, it seems that the taxation should change at that time.

**SEN. ELLINGSON** asked if **Mr. Sorensen** would agree, though, that the land used for forestry is lower than the tax would be if it was used for a residential subdivision, and **Mr. Sorensen** said that was correct. **SEN. ELLINGSON** then asked, if a company had benefitted from the lower rate of taxation, and the land use is changed, perhaps being held for use as a subdivision, why it isn't equitable that the state then go back and tax it at the rate to which the land would be subject if its use were changed, and **Mr. Sorensen** said that it was his sense that the tax should change at the time the use changes. If the landowner developed the property, then it should definitely have a taxation change, but just by virtue of selling the land to a third party who develops the land, the original landowner should not be penalized because the subsequent owner changes use.

**SEN. ELLINGSON** said that if a company sold the land to someone who intended to subdivide it, that person is going to be buying it at subdivision prices and the previous owner would reap the benefit of that higher price that is being paid for the land that is sold, and **Mr. Sorensen** agreed.

**SEN. ELLINGSON** directed **Mr. Sorensen** to his assertion in his testimony that if this bill were enacted, Plum Creek would have been less likely to enter into the land sales that resulted in the conservation of open space along the Blackfoot, for example. He said, looking at page 2 of the bill where it provides that reclassification of forest land to agricultural land or open space does not constitute a removal from forest land classification, he would interpret that exception to apply to the 12,000 acres that was conveyed along the Blackfoot which is now subject to a conservation easement, and he asked if **Mr. Sorensen** agreed. **Mr. Sorensen** said that on that particular sale, he would agree because it was a public sale, but on the other conservation easement sale, if Plum Creek had had to make a statement that that land had to stay in open space or in timberland, they would

not have been able to appraise it at its highest and best use value and get that differential for their tax benefit, so it would have hindered that kind of sale. He said, regarding the public sales, there is nothing in this legislation that exempts a sale to the public from the rollback tax.

**SEN. ELLINGSON** said there was some question as to whether this would apply to conversions of use at 2500 acres or above. He said he reads the bill that it applies to a landowner who owns 2500 acres, and if the landowner peels off 20 acres for a subdivision, that it would apply to that 20-acre plot, and he asked if that was correct. **Mr. Thompson** said that was correct.

**SEN. ECK** asked if the Department of Revenue might have a short explanation of the appraisal process for forest land, and **Randy Pearson, Department of Revenue**, said that standing timber is exempt from taxation in Montana, but the land under the timber is taxed at its productive value. He also said that the capitalization of net income to arrive at the forest productivity values is a formula was actually plagiarized from the state of Idaho. In that formula are such factors as stumpage values by various regions in the state, the costs, and the costs are deducted and capitalized at a rate that is mandated by the legislature. **SEN. DEPRATU** asked if a synopsis could be provided of that procedures, and **Mr. Pearson** said that they would provide that.

**SEN. STANG** said that the assessment would be on land that has been converted within 10 years of application, and he wondered if everybody that meets this qualification would now have to apply for timber classification, or does it mean that some of those people who have land that is classified as timberland for more than the last 10 years would be exempt from the bill, and **Mr. Pearson** said he interpreted the bill to mean that only those landowners that own at least 2500 acres in a county would be required to immediately reapply under this proposal. He said there is a provision that states that those under 2500 acres will not have the forest eligibility removed if they do not file another application.

**SEN. STANG** then asked if all the landowners over 2500, even though the land has been classified as timberland for the last 15 or 20 years, will have to reapply under this proposal, and **Mr. Pearson** said that was correct. He said there are very few landowners that will fit this category. **SEN. STANG** asked about some unintended consequences for those people under 2500 acres, and **Mr. Pearson** said that when the original Forest Tax Act was passed in 1991, there was a provision in the act that stated that landowners must state through the application process that they

intended to eventually harvest their timber. He said there were some wording problems in that particular bill, and in the last session that was corrected. "Eventually" is difficult to quantify, because someone who wants a lower rate of taxation on their land can certainly say, "I eventually intend to harvest my timber," even though it could be 200 years from now, so that language was taken out of there, but the statement was still on the applications. So since 1994, individuals who have wanted to apply for forest land classification have had to fill out an application with that statement on there.

**Mr. Pearson** said in this proposal, that would be a key, that they would have to state that they do intend to eventually harvest their timber, so the Department would go back through their files and those who had said "no" to that portion of the application, would either be removed from forest land classification or be required to file again. If they said no a second time, the Department would not grant them the forest land classification.

**SEN. STANG** said that a number of proponents had said that if this bill should pass, they would look at reclassifying their land as something else, maybe even ag land, and he wondered how timber land could be classified as ag land. **Mr. Pearson** said it was not possible. He said you can't be ag land and/or forest land, you are one or the other.

**SEN. STANG** asked whether companies like Plum Creek, if this bill should pass, would hurry up and sell their lands or transfer those lands to some other type of ownership so that they were not subject to this rollback, and whether that could fly in the face of what we're trying to do with subdivisions in the state of Montana in the planning process. **Mr. Sorensen** said he had not thought that far ahead. He said he did not think so. He said the purpose of Plum Creek's land program is to be a responsible land program and they would try to deal with it in a responsible way. He said that their feeling is that putting some kind of a punitive tax on this situation hinders Plum Creek's ability to manage their lands in a responsible way.

**SEN. BOHLINGER** said that he understood that the tax on timberland is 1%, and **SEN. KEENAN** said he thought it was \$1 an acre. **SEN. BOHLINGER** asked how that compared with agricultural land, and **SEN. KEENAN** said he did not know.

**SEN. BOHLINGER** said that on page 1, lines 22 to 25, of the bill says that taxation may not be converted to another use for at least 10 years from the date of application, and then it goes on to say in (5) if the forest land described is withdrawn from



classification, the land is subject to additional tax, penalty and interest as provided in Section 2. He asked if the 10-year application is an irrevocable pledge not to do anything but harvest timber on this land, but that after the 10-year period, that is when the election could be made to develop the property, and **Mr. Thompson** said that it would not be irrevocable during that 10 years. He said if the land use is converted during that ten years, then that is when the rollback tax would apply. At the end of the 10 years, the landowner would again have the choice of making the election of having the land taxed at its fair market value or for whatever use, or if they want to be taxed at the low forest land classification rate, they could make that decision at that time.

**SEN. BOHLINGER** said **Mr. Thompson** had mentioned additional tax, penalty and interest, and he said he did not see that described in the bill. He asked what the additional tax was, what the penalty tax was, and what the interest was. **Mr. Thompson** said that that refers to existing Montana law. **Mr. Pierson** explained that the extra tax would begin, once this bill is in place and a new application was filed, one year down the road, if they convert their forest land into residential/commercial use, they would essentially be subject to one year in back taxes that would be calculated at market value.

**SEN. BOHLINGER** said an article by **Mr. Thompson** in the "Independent Voices," states that rural sprawl does not pay for itself. The cost of providing services like schools, road maintenance, fire protection, exceeds the traditional tax revenues. He asked **SEN. KEENAN** if that is why the bill is being brought forward, so that there would be monies available through this penalty and tax and interest to pay for these public services. **SEN. KEENAN** said that that was not the key reason, but it is one of the reasons.

**SEN. ELLIS** said that the Department of Revenue did not come as an opponent or a proponent on this bill, and he wondered if this bill was vulnerable because of the action taken by the Montana Supreme Court and by the State Tax Appeal Board on the agriculture rollback taxes. **Mr. Pierson** said that the Department is standing neutral on this proposal, so he has tried to be informative without appearing to be in favor or against the bill. He said he was with the Department when the original rollback tax was applied to agriculture, and the problem was that it targeted the buyer, not the seller, and that is a problem in this bill as well. Oftentimes, the buyer was unsuspecting of this rollback tax, and that was the problem. He said rollback taxes are in place in other states, and they can be workable if they are crafted very carefully.

**SEN. ELLIS** said that if the buyer knows this obligation exists, no matter who is the responsible party, the property is not worth more money because it has taxes assessed against it, so the seller is the one who has to address the taxes in the sale price or some other method, and he asked how this bill works and whether this had been reviewed. **Mr. Thompson** said this bill had gone through review in Legislative Services on the Constitutionality question, and a provision was added to ensure that it was Constitutional. He said this would be phased in over seven years, and that addresses the Constitutionality question. In terms of the workability, he said this would be assessed to the seller, and the mechanism is that before the county actually transfers that title, it has to be paid.

**SEN. ELLIS** asked why only landowners were selected, and **Mr. Thompson** said that Montana has just begun to see the process of these large timber holdings being sold for development. He said Plum Creek is the largest landowner facing this.

**SEN. DEVLIN** asked if **Mr. Pearson** was with the Department when the ag land situation occurred and whether he expected that the response might be the same to this bill, and **Mr. Pearson** said that this proposal is radically different from that proposal in that it dealt with agricultural land and this proposal deals only with large landowners over 2500 acres in size. He said that in his opinion nobody will be paying a rollback tax under this proposal as it is written, so there won't be any controversy.

**SEN. DEVLIN** then asked **Mr. Thompson** why he mentioned Plum Creek, and he wondered if that was his whole reason for this legislation, and he said that there are a few other companies that are also contemplating these kinds of sales all over Montana.

**SEN. EKEGREN** said there was a question asked about the taxes paid on land if it is forest land and at some point it becomes developed land which is worth a lot more. He wondered if there would be a capital gains tax on that land, and **Mr. Pearson** said that there is a capital gains tax on the harvest of timber.

**SEN. EKEGREN** asked **Mr. Youmans** if putting the logging industry under such pressure could cause them to develop that land and get out of the timber industry, and **Mr. Youmans** said that if logging was prevented because of conflicts with other natural resource issues, that maybe the timber industry would say it is not worth the fight and get out of the business. He said that is a potential, especially if there is a very low return on an investment and there is a great deal of conflict.

**SEN. STANG** asked whether that application had to be done every ten years, and **Mr. Pearson** said that currently that is not generally the case. **SEN. STANG** asked if he was correct in saying, then, under this bill, once they have applied and they have had that classification for eleven years, that the rollback tax would not apply, and **Mr. Pearson** said that for landowners who own at least 2500 acres in a county, they would have to reapply every ten years.

**Closing by Sponsor:**

**SEN. KEENAN** said that he felt some of the questions that had been brought against the bill have been addressed by the amendments. He said he appreciated the fair and informative hearing, and urged do pass.

**EXECUTIVE ACTION ON HB 168**

**Motion:** **SEN. DEPRATU MOVED THAT HB 168 BE CONCURRED IN.**

**Discussion:**

**SEN. ELLINGSON** said that his notes indicate that everyone seemed to think this was a good idea, so he was in favor of the bill.

**Vote:** Motion passed 8-1 with Stang voting no.

**CHAIRMAN DEVLIN** noted that **SEN. TAYLOR** will carry this bill.

**EXECUTIVE ACTION ON SB 244**

**CHAIRMAN DEVLIN** said this is the investment tax credit, and pointed out that it does have a substantial fiscal impact.

**Motion:** **SEN. STANG MOVED THAT SB 244 DO PASS.**

**Discussion:**

**SEN. STANG** said that **SB 244** should be kept alive at least until the legislature decides what to do with **SB 200**. He said that in the debate on **SB 200** there was a discussion about what the different surrounding states do, and one of those was investment credit on equipment. He said he has always felt that this was a worthwhile provision and he was sorry to see that the federal government had dropped it. He said this is something that should be researched further.

**SEN. ECK** said her preference would be to hold it in the Taxation Committee until the other income tax bills have come because it is difficult to look at these proposals in a piecemeal way. **SEN. ELLIS** said that income tax is dealt with in the sales tax bills that have not been heard yet. **SEN. ECK** said that the Department of Revenue has put together some data about what all these bills do, and she felt that the Committee should have that information to look at.

**SEN. GLASER** said that he has a concern that tax policy that should be set here is being set somewhere else in this legislative session, and he would like to see **SB 244** stay in the Taxation Committee for now.

**SEN. EKEGREN** said that he supports this concept and he would like to see it move on in the process.

**SEN. DEPRATU** said he agreed with **SEN. GLASER** in that it should stay in this committee until we are better informed.

**Substitute Motion/Vote:** **SEN. DEPRATU MADE A SUBSTITUTE MOTION THAT SB 244 BE TABLED.** Substitute motion carried 7-2 with Ekegren and Stang voting no.

#### **EXECUTIVE ACTION ON SB 375**

**SEN. BOHLINGER** said that there is an amendment to this bill which eliminates the opportunity for someone to claim the \$500 deduction on both the Family Education Savings Act as well as this option. They must choose one or the other.

**Motion:** **SEN. BOHLINGER MOVED SB037501.ALH, EXHIBIT(tas52a12).**

#### **Discussion:**

**SEN. BOHLINGER** says this amendment takes out the opportunity for doubling up on the tax credits.

**SEN. STANG** said that it doesn't eliminate the deduction from the Family Education Savings Account, it just says that you cannot use that account to get this credit, and **SEN. BOHLINGER** said that was correct. He said you cannot have two deductions, you have to have either one or the other. **Mr. Heiman** explained that you can continue using the educational savings account, but you cannot take money out of that account that you already had a deduction on and use that money to take another deduction.

**CHAIRMAN DEVLIN** said he thought there had already been an amendment on this that was similar, and after some discussion it was determined that this was the same amendment.

**SEN. STANG** then asked if a person puts \$1,000 into their savings account and keeps it in there the required time, and then that person takes that \$1,000 and pays an expense in addition to another \$500, whether he still gets the deduction for the education savings account and then gets a further deduction for the extra \$500 that he spent over and above that to pay these education expenses. **Mr. Heiman** said that the two can be used separately, but the same dollars cannot flow through the two deductions.

**Motion:** **SEN. BOHLINGER MADE THE SUBSTITUTE MOTION THAT SB 375 DO PASS AS AMENDED.**

**SEN. BOHLINGER** said this bill will allow someone to invest \$500 in a family member's education and take a deduction for that investment. The monies could be used in any accredited in-state public or nonpublic post-secondary institution, including trade schools and private schools. He said that under the Family Education Savings Act, those private schools do not qualify.

**CHAIRMAN DEVLIN** asked where in the bill it designates trade schools, and **SEN. BOHLINGER** said that any post-secondary school would include trade schools, as long as they are accredited. **Mr. Heiman** agreed that if it is a post-secondary school and it is accredited, it will qualify.

**Vote:** Motion carried 8-1 with Devlin voting no.

#### **EXECUTIVE ACTION ON SB 308**

**Motion:** **SEN. BOHLINGER MOVED THAT SB 308 DO PASS.**

#### **Discussion:**

**SEN. BOHLINGER** said that in the 1997 session he carried the bill entitled "Family Education Savings Act" that allowed parents to set aside up to \$3,000 a year for family members' continuing education at an accredited post-secondary school. That bill passed and has been used by some 1800 Montanans in the amount of nearly \$3 million. He said because of Section 529 of the Internal Revenue Code and changes that the federal government has brought forward, this bill had to be brought into conformity with federal law, and that is what this achieves.

**CHAIRMAN DEVLIN** said he had questioned the "each spouse" language, and also the "held on deposit for three years" language during the hearing on **SB 308** and wondered if **SEN. BOHLINGER** had comments to that. **SEN. BOHLINGER** said that under the existing law, each spouse can put into an account \$3,000, so it is possible for some students to benefit in the amount of \$6,000. He said he didn't believe that had happened, but that it is possible under the existing law. In regard to the three-year concern, **SEN. BOHLINGER** said that was a concern of the College Education Savings Bank in that people were putting the money in in August and then withdrawing it in September and taking the tax deduction. He said there was no opportunity for the banking institution to have any kind of financial gain on an investment that was made one day and withdrawn the next day, so by having the money on deposit for a period of three years, this would clarify that.

**SEN. STANG** asked if a person would have to pay taxes on the interest earned on that account, and **SEN. BOHLINGER** said that the student would have to pay the taxes at his marginal rate. **SEN. STANG** said that he could see one year to qualify, but that three years seemed to be excessive. He said it appeared that a person would only have to pay on the earnings, which won't be much in one year, but he wondered if it removed the incentive. **SEN. BOHLINGER** said that this will probably have a more long-term investment effect in that parents or grandparents will be setting aside money for children still in grade school and the monies will accumulate for a longer period of time before they would be ready for college or trade school.

**CHAIRMAN DEVLIN** asked if this was only for higher education, and **SEN. BOHLINGER** said that it also includes any accredited post-secondary school.

**SEN. EKEGREN** asked if it was possible to actually put the money in on one day and take it out the next without penalty, and **SEN. BOHLINGER** said that under the Family Education Savings Act, he had put money into an account in August and in October it was taken out, and that he will be taking the deduction.

**SEN. ELLINGSON** said that was only as it is written now and not with the amendment, and **SEN. BOHLINGER** said that was correct. **SEN. ELLINGSON** went on to say that he agreed with **SEN. ELLIS** in that if we want to give a \$3,000-a-year deduction for education expenses, the amendment should be rejected, do away with the educational savings account, and give a straight deduction, but if we are trying to help people save over a longer period of time, then we need to have this amendment so that it is limited.

**SEN. BOHLINGER** replied that we want to encourage thrift and encourage people to set aside money for education, and this is a long-range planning process. He said he feels that ideally the money will be set aside for young children in contemplation that they are going to eventually be going to college. He said he would like to see an amendment that would allow the money to be invested in equities and see it grow at a little more aggressive rate.

**CHAIRMAN DEVLIN** asked if he would like to put together an amendment to that effect, and **SEN. BOHLINGER** said he would. **SEN. BOHLINGER** said he would withdraw the motion and see about getting some amendments.

#### EXECUTIVE ACTION ON SB 175

**Motion:** **SEN. ECK MOVED SB 175 BE TAKEN OFF THE TABLE.**

**Discussion:**

**SEN. ECK** said this bill had been amended to get a new Fiscal Note, which is now available.

**Vote:** Motion carried 6-3 with Devlin, Glaser and Depratu voting no.

**Motion:** **SEN. ECK MOVED THAT SB 175 DO PASS AS AMENDED.**

**Discussion:**

**SEN. ECK** said that we do, through tax credits, provide a lot of credits for persons who purchase insurance on their own. This adds a very special group of children who have very low incomes for whom the state really has some responsibility because they are the children of state employees who don't make enough to be able to purchase the state insurance for their children, which ranges from \$25 to \$45 a month. This is one way we can address not only their condition but especially the condition of their children, who are not entitled to participate in the Children's Health Insurance Program because of federal regulation.

**CHAIRMAN DEVLIN** asked if all state employees were required to buy their children's insurance option, and **SEN. ECK** said they are not. She said they can insure their children, but they do that by making additional payments, and some of these people simply cannot afford that extra expense.

**SEN. ELLINGSON** asked if these people may purchase that insurance, but that they are not required to do so, and **SEN. ECK** said that

was correct. **SEN. ELLINGSON** then asked if this bill was to give them some additional incentives, and **SEN. ECK** said that was correct, that if they do buy the insurance for their children, they will get a tax credit for it. **SEN. ELLINGSON** asked if it was correct that they could not be covered by the CHIPS program, and **SEN. ECK** said that was correct.

**SEN. ELLINGSON** said that the amendment only refers to employees of state government and does not include the employees of counties, cities, towns and schools district. He wondered if those employees were permitted to participate in CHIPS, and **SEN. ECK** said that they were. **SEN. ELLINGSON** then asked if, with this amendment, anybody in the state, then, who is within these income categories will either be entitled to participate in CHIPS or they'd be entitled to this tax credit, and **SEN. ECK** said that was correct.

**SEN. BOHLINGER** referred to Assumption 5 of the fiscal analysis which says that there are 313 state employees whose wages are below 150% of the federal poverty level. These are single parents with children under 19, and he said he thought the point that **SEN. ECK** is making is that for these folks with wages so low, families have a hard time coming up with that \$25 a month for insurance coverage. He said he supports this effort.

**CHAIRMAN DEVLIN** said there are a lot of people in Montana who can't afford health insurance, and he felt that just because they are state employees should not give them an added advantage. **SEN. ECK** said, however, that most of those people will be able to apply for CHIPS, and **SEN. BOHLINGER** said 10,000 of them would. **SEN. ELLINGSON** said that was the point, that these folks categorically cannot apply for CHIPS, so it seems to him to be appropriate that they be given some opportunity for a break.

**Vote:** Motion carried 5-4 with Devlin, Ellis, Glaser and Depratu voting no (Roll call vote #1).



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**ADJOURNMENT**

Adjournment: 11:32 A.M.

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SEN. GERRY DEVLIN, Chairman

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SANDY BARNES, Secretary

GD/SB

**EXHIBIT** (tas52aad)